IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13065 of 1994
With
SPECIAL CIVIL APPLICATION No. 5174 of 1996
With
SPECIAL CIVIL APPLICATION No. 10235 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARISHCHANDRASINHJI BHARATSINHJADEJA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR DD VYAS, SENIOR ADVOCATE, DHAVAL D VYAS for Petitioner(s) : 1,
MR KL PANDYA, ASSISTANT GOVERNMENT PLEADER for Respondent NO: 1, 3,
RULE NOT RECD BACK for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

Date : 20/12/2005

CAV JUDGMENT

1. The facts arising in these three petitions are inter

linked with each other. Therefore, they are heard together and disposed of by this common judgment.

1.1. The petitioner of Special Civil Application No. 13065/1994 has prayed to quash and set aside the order of Mamladar and A.L.T., Lodhika dated 16/08/1993 Annexure – H, the order of Deputy Collector dated 09/12/1993 in Appeal No. 12/93 at Annexure – I and the order of Gujarat Revenue Tribunal dated 12/10/1994 passed in Revision Application No. TEN.B.R. 1/94 Annexure – N. The petitioner has also prayed to remand the matter to Mamlatdar & ALT, Lodhika to decide it according to law, for consideration of granting one additional unit in favour of the petitioner's mother and for deducting the bid land from the holding of the petitioner and has further prayed to process the form of the petitioner filed under Section 6 of the Urban Land Ceiling Act, 1976.

1.2. The said petitioner has also filed another Special Civil Application No. 5174 of 1996 wherein, he has prayed for quashing and setting aside the order dated 05/10/1995 Annexure – A passed by the Competent Authority and Additional Collector, ULC, Rajkot and the order dated

05/06/1996 passed by the Urban Land Tribunal at Annexure – B.

1.3 The State of Gujarat has filed Special Civil Application No. 10235 of 1996 wherein the petitioner of the above two petitions is shown as Respondent No.1. In this petition, the State has prayed for quashing and setting aside the judgment and order dated 12/10/1994 passed by the Gujarat Revenue Tribunal, Ahmedabad in Revision Application No. TEN.B.R.1/94. (For brevity the parties shall be referred as the petitioner and respondent – State hereinafter).

2. The present case has chequered history. The State Government has enacted an Act known as “Gujarat Agricultural Land Ceiling Act, 1960” (“Land Ceiling Act” for short), by which ceiling has been fixed on holding of agricultural land for the purpose of acquisition and disposal of surplus land. The said Act was brought into force with effect from 1st September, 1961. The Mahalkari / Agricultural Land Tribunal was required to prepare a list of persons holding surplus land under Section 13 of the Act and consequently public notice under Rule 10, and an individual notice was served on the petitioner calling for the particulars of the total holding of the

petitioner.

2.1. The petitioner by his reply dated 23rd July, 1968 raised various contentions and contended that he was not holding any surplus land, wherein the ceiling of 120 Acres is prescribed for the District of Rajkot. The Agricultural Land Tribunal on 31/07/1968 held that the petitioner was holding in all 114 Acres – 11 Gunthas of agricultural land and as the land was not exceeding ceiling prescribed for Rajkot District, no land was required to be acquired from the holding of the petitioner.

3. Thereafter, the provisions of Ceiling Act was amended and ceiling was reduced and accordingly, ceiling area for Rajkot District was reduced to 51 Acres by amendment. Further the word “land” was redefined by sub-section (17) of Section 2 and the bid land held by the Girasdar in the Saurashtra area was included as part of total holding. Consequent upon the changes made by the amended Act, an inquiry was again held by the Agricultural Land Tribunal by registering Case No. 19/76. The Tribunal by its order dated 31/01/1977 held that the petitioners total holding was 311 Acres and 05 Gunthas and as the petitioner had a major son in his family, the

petitioner was entitled to one more unit under Section 6 of the Act and therefore, the petitioner was entitled to hold in all 102 Acres of land. By the said order, the petitioner's remaining land admeasuring 209.05 Gunthas was declared to be surplus and it was held that the same had vested in the State Government under Section 21(1) of the Ceiling Act.

4. By the said order, the petitioner was also directed to hand over the possession of the land admeasuring 198 Acres 39 Gunthas of Survey No. 250 situated in Village Raiya in Rajkot Taluka and 10 Acres 7 Gunthas of Survey No. 99/1 of Village Pal, Lodhika Mahal.

4.1. The petitioner challenged the said order by filing an appeal before Deputy Collector, Rajkot, who by its judgment and order dated 06/06/1976 confirmed the said order. The petitioner preferred a Revision Application being No. 48/78 before the Gujarat Revenue Tribunal (“G.R.T.” for short) and the same was also dismissed by G.R.T. by its judgment and order dated 20/03/1979.

4.2. The petitioner preferred a petition being Special Civil Application No. 148/80 before this Court. The Division Bench (Coram : Acting C.J. P.D.Desai and

M.B.Shah, J.) by its order dated 19/04/1983, allowing the same held that no opportunity was given to the petitioner to exercise the option for selection of surplus land and with that purpose remanded the matter to Agricultural Land Tribunal with a direction that the Tribunal will afford the petitioner an opportunity to make selection in accordance with the provisions of Section 20 of the Act and it will redetermine the same issue in light of the representation of the petitioner in accordance with law.

5. The State of Gujarat filed Civil Appeal No. 10025/83 before the Hon'ble Apex Court. The Apex Court by its order dated 25/10/1983 allowed the said appeal and remanded case back to the High Court to decide the question of point according to law. The Division Bench (Coram : N.H.Bhatt and M.B.Shah, JJ) heard Miscellaneous Civil Application No. 489 of 1983 filed by the State in Special Civil Application No. 148/80 and by its order dated 19/04/1984 allowed the review application by observing that main Special Civil Application stands revived and as observed by the Supreme Court, all points on the question of option will remain open, including the effect and validity of Annexure – A dated 22/12/1976 before the Supreme Court and, the Division Bench before which now Special Civil Application No. 148/80 stands

revived, will deal the same in accordance with law.

5.1. In view of the said order, the Special Civil Application No. 148/80 was heard again by the Division Bench (Coram : C.V.Jani and J.M.Panchal, JJ) and by its decision dated 22/04/1991 remanded the matter to ALT to decide the question as to whether on specified date i.e. 01/04/1976, there was any minor son in the family of the petitioner or not. The petitioner, before Mamlatdar & ALT raised all contentions as available to him. He in fact, contended that he is entitled to get one separate unit of his mother and 1/5th unit for his minor son under Section 6(3B) of Land Ceiling Act. The Mamlatdar by its judgment and order dated 16/03/1993, held that the petitioner is holding 234 Acres and 10 Gunthas as surplus land.

6. Against the said decision, the petitioner preferred Ceiling Appeal before the Deputy Collector, Rajkot who by its judgment and order dated 09/12/1993 dismissed the appeal as Urban Land (Ceiling and Regulations) Act, 1976 (“ULC Act” for short) had come into force on 07/02/1976. The petitioner also filled up form under Section 6 of the Act on 09/01/1985. One more development meanwhile had taken place that on 29/07/1991, and that is the petitioner's land more particularly the land bearing

survey No. 250 of Village Raiya was also shown under recreation and residential zone. The petitioner has produced the certificate issued by Town Planning Officer of Rajkot Urban Development Authority (“RUDA” for short) at Annexure – K. The petitioner has also filed form under Section 6 of ULC Act for submitting a scheme under Section 21 of said Act. Accordingly, the petitioner has also addressed a letter dated 06/04/1993 to the Secretary, Revenue Department, Sachivalaya, Gandhinagar stating that for his lands of Village Raiya, the provisions of ULC Act are applicable and therefore, his case should be decided under the said Act.

7. Reverting back the chronological events, the petitioner preferred Revision Application before the G.R.T against the decision of Deputy Collector, by filing Revision Application being No. TEN.B.R.1/94, wherein the petitioner has specifically contended that he is entitled to get one more unit, as his mother was alive on 01/04/1976. It was also contended that in view of the provisions of the ULC Act, the provisions of the Ceiling Act will not be applicable.

8. The G.R.T. partly allowed the Revision Application by holding that the petitioner is entitled to 1/5th unit

for his minor son Himanshu and thus, he is entitled to 112 Acres – 08 Gunthas. However, G.R.T. has not granted one separate unit for his mother. The G.R.T. also held that the total holding of the petitioner is only 311 Acres and 05 Gunthas on 01/04/1976.

9. As stated above, the petitioner as well as the respondent–State has challenged the order dated 12/10/1994 passed by G.R.T. in Special Civil Application No. 13065/1994 and Special Civil application No. 10235/1996. The second petition being Special Civil Application No. 5174/1996 preferred by the petitioner is with respect to the land bearing Survey No. 250 situated at Village Raiya of Rajkot District and the land admeasuring 198 Acres and 39 Gunthas. As stated above with respect to the said land, the petitioner made declaration in Form No.5 under the ULC Act for obtaining exemption under Section 21 of the ULC Act on 21/04/1993. The said application was rejected by competent authority and Additional Collector ULC, Rajkot on 05/10/1995.

10. The petitioner filed appeal being No. Rajkot/49/95. The Urban Land Tribunal and Ex-officio Secretary, Land Revenue Department, Respondent No. 2 herein dismissed the appeal by its order dated 05/06/1996. The petitioner has

challenged both the decisions in the petition being Special Civil Application No. 5174/1996 on the grounds stated therein.

11. I have heard Mr. D.D.Vyas, learned Senior Counsel appearing for the petitioner and Mr. K.L.Pandya, learned Assistant Government Pleader appearing for the respondents.

11.1. Mr. Vyas, learned Senior Counsel submitted following submissions :

(i) The G.R.T. has erred in law in not awarding one more unit to the petitioner as the petitioner's mother was alive on 01/04/1976.

(ii) The land bearing survey No. 250 of Village Raiya admeasuring 198 Acres is admittedly, bid land, therefore, it would not be covered under the definition of word “land” as defined under Section 2(17) of the Act, and therefore, the bid land should not be included in the holding. He therefore, submitted that G.R.T. ought to have deducted the aforesaid land from the holding of

the petitioner as it is bid land and it is not covered by the provisions of the Land Ceiling Act. Alternatively, he submitted that the aforesaid land of the petitioner of Village Raiya is part of Rajkot agglomeration and forming part of residential cum entertainment zone and therefore, the provisions of ULC Act is applicable in view of Section 42 of ULC Act, which has over riding effect of other laws, including Land Ceiling Act.

12. Mr. Pandya, learned Assistant Government Pleader on the other hand while supporting the decision of the authorities submitted that the petitioner has not claimed mother's unit in the application filed by him under the provisions of Land Ceiling Act. Alternatively, he submitted that even if mother's claim is made in the said application, no specific contention is made before the authorities nor made any grievance in any proceeding and therefore, the petitioner cannot be allowed to raise this contention for the first time in the petitions. By inviting my attention to the findings recorded by this Court in its order of April 1983 that the petitioner is holding 209 Acres and 05 Gunthas of land as surplus land, it was submitted that it is not open for the petitioner

to say that he is not holding surplus land. Finally Mr. Pandya submitted that the land bearing survey No. 250 of village Raiya was shown as holding by the petitioner, therefore, it is not open to challenge the proceedings by contending that Land Ceiling Act is not applicable.

12.1. I have also considered the authorities cited by learned Advocates to substantiate their submissions. The G.R.T. in paragraph 12 and paragraph 13 of its judgment has considered the question of one unit for mother as claimed by the petitioner of 200 Acres of land (it should be 198 Acres and 39 Gunthas of land) situated in Village Raiya which is reproduced as under:

> *"12. Learned advocate Shri Munshaw has further argued that the mother of the applicant was alive on 1-4-76, hence, she is also entitled to claim one unit, hence 51 acres of land should be given to her towards one unit. In my opinion, even if she is entitled to claim one unit, I will not be able to help learned advocate Shri Munshaw in this respect. Because I am bound by the directions given by the Hon'ble High Court by its judgment. Admittedly, the litigation was contested upto Supreme Court but nowhere the applicant claimed one unit for his mother. Hon'ble High Court has given directions for the points to be determined and I cannot go beyond that. Hence, this question cannot be raised at this stage before me. I, therefore, do not consider the question of one unit for the mother.*
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> *13. Learned Advocate Shri Munshaw has further argued that 200-A of land situated in Village Raiya is shown in the form filled in by the applicant under the provisions of Urban Land*

> *Ceiling Act. He has, therefore, argued that when the land situated in Village Raiya is covered under the Central Act, the same land cannot be touched under the State Act. I do not agree with this argument also advanced by learned Advocate Shri Munshaw. The land situated at Village Raiya is bid land which was shown in the holding of the applicant as Agricultural land. Even if it is shown in the form filed by the applicant under the provisions of the Urban Land Ceiling Act, the provisions of Gujarat Agricultural Lands Ceiling Act will not be affected and or disturbed. The holding of 200 acres of agricultural land at Raiya remains in the holding of the applicant and it is to be dealt with under the Agricultural Lands Ceiling Act. Even this point cannot be raised by learned advocate Shri Munshaw as we have to consider the case only for the purpose for which it was remanded by the Hon'ble High Court by its judgment."*

Reading the same, it clearly appears that the Tribunal rejected one unit for mother on the ground that as said question was not raised before the High Court, and the High Court has remanded the matter back to ALT to decide the question with respect to 1/5th share of minor son, it cannot go beyond the directions of the High Court. As far as lands situated in Village Raiya is concerned, specific contention was raised that land situated in Village Raiya is covered under the Central Act i.e. Urban Land Ceiling Act, and the same cannot be touched under the State Act, i.e. the Land Ceiling Act. It was turned down by observing that the land situated in Village Raiya is bid land shown in the holding of applicant as Agricultural land. Even if it is shown in

the form filled by the applicant under the provisions of Urban Land Ceiling Act, the provisions of Agricultural Land Ceiling Act will not be affected and or disturbed and in any case, the point raised by learned Advocate for the petitioner cannot be considered, as the G.R.T. has to consider the case only for the purpose for which it was remanded by the High Court.

13. By recording the aforesaid findings, the G.R.T. in my opinion has committed error apparent on the face of the record, inasmuch as the petitioner has in the form filled clearly mentioned eight persons as family members including two minor daughters and minor son. It is to be noted that in the earlier proceedings before the G.R.T. in TEN.B.R. 48/78, the Tribunal in its decision dated 20th March, 1979, it was specifically submitted before the Tribunal that the petitioner has eight members and two minor daughters i.e. the applicant, his wife, his mother, one major son, one major daughter, two minor daughters and one minor son, and therefore, the petitioner is entitled to hold in excess of ceiling area to the extent of 1/5th of the ceiling area for each member in excess of five. Therefore, the Tribunal ought not to have taken this stand by concluding that it cannot travel beyond the directions of this Court. It appears that reading

decision of this Court dated 22nd April, 1991, it was not clear to Division Bench (Coram : C.V.Jani and J.M.Panchal, JJ) as to whether there was one minor son on the specified date i.e. 01/04/1976. It is clearly observed by the Division Bench that there is no clear finding of the fact that there was one minor son on the specified date and, in view of this, the matter was remanded to Agricultural Lands Tribunal. Merely, because the Division Bench has directed the Tribunal to find out that whether on the specified date 01/04/1976 there was any minor son in the family of the petitioner or not, the claim of the petitioner to have one unit for his mother cannot be turned down on the ground that the said question cannot be reopened. In fact, neither of the authorities have decided the said question. As stated above, this contention is specifically raised by the petitioner, which is reflected in the order dated 20th March, 1979 of the G.R.T., which has not been decided for any reason. In my opinion, the finding recorded by the Tribunal is required to be interfered as far as the claim of the petitioner's mother is concerned. In view of this, I see no merits in the submission made by the learned Assistant Government Pleader that no claim is made in past and therefore, it cannot be considered at this stage. From the discussion above, it is clear that

in view of the claim made by the petitioner in the first proceedings after coming into force of Land Ceiling Act, the mother of the petitioner is entitled to have her own separate unit. As provided in the provisions of Land Ceiling Act, 1951 the petitioner is entitled to have 51 Acres being ceiling unit in the name of his mother.

14. In case of ***State of Gujarat v. Patel Kala Sana & Ors. Reported in 1994(1) GLR 448,*** this Court, while considering the question whether or not, the provisions contained in Section 6 (3C) of the Act would be available to major son in a family where only a female parent was alive has observed in Paragraph 32 as under:

> *"32. It is obvious that a family or a joint family consisting of the mother and her major son or sons would definitely get the benefit of sub-sec. (3C) of Sec.6 of the Act. As aforesaid, the word "son" has to be understood in the context of a living parent. Such a living parent could either be such son's mother or father. If either parent is living, a major son in the family will be regarded as a son and nothing else. The major son in the family will be regarded as a son and nothing else. The family unit, though the mother may not be the head of the family for all purposes, will be headed by the mother and none else. In that context, a son will have to be recognized as a son of that mother who is found living. It thus becomes clear that the existence of the male parent alone is not necessary for the purpose of giving benefit of Sec.6(3C) of the Act to a major son in the family. A family consisting of the mother and her major son or major sons, irrespective of the size of the family, would be entitled to the benefits flowing from Sec. 6*

(3C) of the Act."

15. In the case of ***Jayantilal Tribhovandas Patel v. State of Gujarat reported in 1994(1) GLR 757***, this Court has held that for the purpose of ascertaining the total number of members in family, minors, widow, ladies cannot be excluded if they are seven members in the family and family would be entitled to one additional unit.

15.1. The Apex Court in ***State of Gujarat v. Jat Laxmanji Talasji AIR 1988 SC 825*** approved the decision in ***Nathekhan's case. T***his Court in ***Nathekhan Sojalkhan Bihari v. Mamlatdar, Vadgam & Others 1984 (2) 25 GLR 1473***, observed:

> *"With respect the Tribunal's thinking is confused, Sub-section (3-B) of Sec. 6 merely lays down that where a family consists of more than five members comprising a person and other members of the categories mentioned therein, namely, (i)minor son, (ii) widow of a pre-deceased son, (iii) Minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead, such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five provided the total holding of the family does not exceed twice the ceiling area. A bare perusal of this sub-section makes it clear that in order to avail, two conditions must be satisfied, namely, (i) the family should consist of more than five members, and (ii) it should have amongst it the categories of members mentioned in the three sub-clauses. If the family does not consist of more than five members but has*

> *amongst it any of the members mentioned in the three sub-clauses, it will not be entitled to the benefit of enlargement of the ceiling area. Therefore, the benefit of enlargement of the ceiling area will enure to only that family where the total number of members is more than five and amongst them are members belonging to the categories mentioned therein. However, there is nothing in the sub-section wherefrom it can be inferred that the wife, widowed mother and unmarried daughters are intended to be excluded from the family, that is group or unit constituting the family. I am, therefore, of the opinion that all the authorities including the Tribunal were wrong in coming to the conclusion that the aforesaid female members of the family had to be excluded for the purpose of determining the size of the family".*

16. In view of the settled law, the mother of the petitioner is entitled to have her own separate unit and therefore, the petitioner is entitled to include 51 acres being unit of his mother. Considering the fact that the petitioner is fighting the legal battle to save his own land since 1968, when he first filed reply to the notice issued by Mahalkari / Agricultural Land Tribunal under Rule 10 and from that date, till date the matter had gone up to Supreme Court and was again remanded, no useful purpose will be served to again remand the matter back to ALT to ascertain whether the mother of the petitioner is entitled to have her separate unit. The fact is that the contention was raised before the G.R.T. in earlier proceedings, that the petitioner has eight members in his family, i.e. the petitioner, his wife, his

mother, one major son, one major daughter and two minor daughters and the Tribunal in its judgment dated 20th March, 1979 has in fact recorded the same and that the application in the prescribed form filled by the petitioner would go to show that the claim for the mother was very much there since the beginning and in any case not raised for the first time.

17. In view of this, I hold that the petitioner is entitled to hold in excess of ceiling area to the extent of 51 Acres of land being unit of his mother. With this finding, I set aside the findings recorded by the G.R.T. in its order dated 10/10/1994.

18. Reverting back to the contention that the land situated in Village Raiya is shown in the form filled in by the petitioner under the provisions of the Urban Land Ceiling Act and therefore, it should be decided under the provisions of the said Act instead of deciding the same under the provisions of Land Ceiling Act. In other words the land situated in Village Raiya could not have been decided under the provisions of Land Ceiling Act notwithstanding the fact that the land situated at Village Raiya is bid land and even though the petitioner is shown as holding as agricultural land.

18.1. Section 42 of the Urban Land Ceiling Act provides the Act to override other laws and it reads:

> *"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or other authority."*

18.2. In view of the aforesaid provision, it is abundantly clear that the Act is self-contained code and has overriding effect, notwithstanding anything inconsistent therewith in any other law for the time being in force. In view of Section 42 of Urban Land Ceiling Act, there is no manner doubt that the said Act being Central Act, it has overriding effect on Land Ceiling Act, being a State Act.

19. My view is fortified with the decision by the Full Bench of Andra Pradesh High Court in case of ***Tumati Rangayya v. The State of Andhra Pradesh and others AIR 1978 AP 106.*** The Full Bench was posed with the question whether in any repugnancy or inconsistence between the provisions of Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act and those of the Central Act viz. Urban Land (Ceiling and Regulations) Act, 1976, the provisions of State Act would prevail. It was held:

> *"A law made by Parliament pursuant to the power surrendered to it under Article 252 prevails over a State Law and the provisions of a State law to the extent that they conflict with the Central law are void. The language of the Article 252 "any Act so passed shall apply to such States", is peremptory enough to suggest that the Act so passed shall prevail over any other State Law. The position is further clarified by the 2nd Clause of Article 252 which bars the amendment or repeal of the Act by an Act of a State Legislature. Even Parliament is not empowered to amend or repeal the Act except after following, again, the procedure prescribed by Article 252 (1). Thus a law made by parliament pursuant to the power surrendered to it by the Legislature of tow or more States holds a very special position under the Constitution and must be held to prevail over any other State law."*

19.1. In view of this it is clear that even though the petitioner has shown land situated at Village Raiya as bid land in the holding of the petitioner as Agricultural land and even if it is shown in the form filed by the petitioner under the Land Ceiling Act, it will be redundant in view of the fact that the petitioner has filled Form no. 5 under Section 6 of ULC Act for obtaining the exemption under Section 21 of the ULC Act on 21/04/1993. True that the application under Section 21 of the ULC Act was rejected by competent authority on 05/10/1995 which was confirmed by the State Government on 05/06/1996 which is a subject matter in Special Civil Application No. 5714/1996. In ***Pestanji Jamshedji Patel v. State of Gujarat & Ors. reported in 1994(2) GLR 1287,*** this Court has observed that thought the word "Master

Plan” is used by the Central Legislature, it is clearly and without leaving any doubt provided that Master Plan means a plan by whatever name called for development purposes. In the present case, it is already shown in the order itself that the land is included in the residential zone. Therefore, that plan would be a master plan as defined in Section 20(h) of the Act and the petitioner's land is included in residential zone and therefore, it cannot be deemed to be agricultural land though, it may have been used mainly for the purpose of agriculture.”

20. In the instant case as can be seen from the Zonal Certificate dated 29/07/1991 wherein (RUDA) has clearly certified that the disputed land is situated in recreation and residential zone it is therefore, clear that land of the petitioner admeasuring 198 Acres 39 Gunthas situated at Village Raiya is included in the Residential Zone and therefore, it cannot be deemed to be agricultural land even though it may have been shown by the petitioner in the form filled under the provisions of Land Ceiling Act.

21. In the instant case after filling the form under Section 6 of the Act, the petitioner made declaration in Form No.5 prescribed under the ULC Act for obtaining

exemption under Section 21 of ULC Act on 21/04/1993. Prior to that the development plan was already prepared by the Rajkot Urban Development Authority (RUDA), as can be seen from the Certificate dated 29/07/1991 showing that the disputed land of Village Raiya is situated in the recreation cum residential zone. Considering the fact that land of the petitioner is admeasuring 198 Acres and 39 Gunthas of Village Raiya being part of Rajkot agglomeration and forming part as of residential cum entertainment zone, the petitioner is entitled to claim the said land and in any case his application under Section 21 could not have been rejected by the authorities. At this stage it is necessary to refer certain definition of the ULC Act. Section 2 and 2(n) defines Urban agglomeration. There is not dispute to the fact that the lands of the petitioner of Village Raiya is under Urban Agglomeration. Section 2(o) defines “Urban Land”

Section 2(o) “Urban land” means-

(i) *any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or*

(ii) in a case where there is no master plan, or where the mater plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a

notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture.

(A) "Agriculture" includes horticulture, does not include-
(i) raising of grass,
(ii)dairy farming,
(iii)poultry framing,
(iv)breeding of live-stock, and
(v) such cultivation, or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day, as for the purpose of agriculture, there is a building which is not in the nature of a farm-house, then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of a farm-house, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) notwithstanding anything contained in Clause (B)of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture;

Section 2(q) defines "vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

(i) land on which construction of a building is not permissible under the building

regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building:

22. In view of the fact that lands of Village Raiya was never agricultural land, and only raising of grass was used as a bid land, it is not included in agricultural land.

23. Considering the aforesaid provisions minutely I am clearly of the opinion that provisions of Agricultural Land Ceiling Act are not applicable to the land situated at Village Raiya and only Urban Land Ceiling Act is applicable, since the said land comes under the Development Plan of RUDA being a land of residential as well as recreation zone.

24. Consequently the said land being non cultivated bid land and which comes under residential and recreation zone of RUDA, any other law more particularly Land

Ceiling Act is not applicable.

25. With the aforesaid findings whether the petitioner of Special Civil Application No. 5174/ 1996 is entitled to get relief as prayed for. The petitioner has prayed for quashing and setting aside the order dated 05/10/1995 Annexure – A passed by the competent authority & Additional Collector, ULC, Rajkot and the order dated 05/06/1996 Annexure – B passed by Urban Land Tribunal and has also prayed to hold and declare Rule 11 of Urban Land (Ceiling and Regulations) Rules as *ultra vires* to Section 21 of ULC Act and it is unconstitutional. In my opinion in view of the fact that on the repeal of ULC Act, the prayer for quashing and setting aside Annexure – B has become redundant. Mr. Vyas, Senior Advocate has frankly stated that in view of the same, he does not press for any relief or declare Rule 11 of the Rules as *ultra vires* to Section 21 of the Act.

26. In the result following order is passed:

(1) Special Civil Application No. 13065/1994 is allowed. The order dated 16/08/1993 passed by Mamladar & A.L.T., Lodhika (Annexure – H), the order dated 9/12/1993 in Appeal No. 12/93 passed by Deputy Collector (Annexure – I) and the order

dated 12/10/1994 passed in Revision Application No. TEN.B.R. 1/94 by the Gujarat Revenue Tribunal (Annexure – N) are quashed and set aside.

It is hereby declared that the mother of the petitioner is entitled to claim one unit. Hence, 51 Acres of land of Village Pal should be given to her towards one unit. It is also hereby declared that the Agricultural Land Ceiling Act does not apply to land bearing Survey No. 250 of Village Raiya, as it has come under the development plan of (RUDA) being land of residential as well as recreation zone. Rule is made absolute accordingly with no order as to costs.

(2) Special Civil Application No. 10235/1996 is dismissed. Rule is discharged with no order as to costs.

(3) Special Civil Application No. 5174 of 1996 is disposed of as it has become infructous in view of the repeal of ULC Act. Rule is discharged with no order as to costs.

[KSHITIJ R. VYAS, J.]

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